

requests under paragraph (3)(A)(ii) unless in that fiscal year the Administrator has first initiated 10 risk evaluations under (A).

This TA only responds to changes since the last version at the time we were reviewing. All previously offered TA is still germane to the extent the provision has not changed since the TA was offered. The technical assistance does not necessarily represent the policy positions of the agency and the administration on the bill, the draft language and the comments.

Please let me know if any additional questions. Thanks,  
Sven

Sven-Erik Kaiser  
U.S. EPA  
Office of Congressional and Intergovernmental Relations  
1200 Pennsylvania Ave., NW (1305A)  
Washington, DC 20460  
202-566-2753

**From:** "Black, Jonathan (Tom Udall)"  
<[Jonathan\\_Black@tomudall.senate.gov](mailto:Jonathan_Black@tomudall.senate.gov)>  
**Date:** April 10, 2016 at 6:07:41 PM EDT  
**To:** "Kaiser, Sven-Erik" <[Kaiser.Sven-Erik@epa.gov](mailto:Kaiser.Sven-Erik@epa.gov)>  
**Subject:** Industry nominated chemicals

Hi Sven,

EPA has indicated that the House bill allows industry nominated chemicals to overwhelm EPA's priorities.

Is there a way to draft the house bill/proposal to allow for industry nominated chemicals to move through "without a cap" (as per the senate bill), but also without compromising EPA's priorities?

Message

---

**From:** Brown, Tristan [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=2524F58C2F0442CBB0D025CDCBD4D1F7E-HILTON, TRI]  
**Sent:** 4/13/2016 7:36:05 PM  
**To:** Jonathan\_Black@tomudall.senate.gov  
**Subject:** RE: Sen. Udall TSCA TA request on Industry nominated chemicals

I'll have you know that we only do good jobs over here.

Tristan Brown  
Deputy Associate Administrator for  
Congressional Affairs  
U.S. Environmental Protection Agency  
Office: (202) 564-4113  
Email: brown.tristan@epa.gov

---

**From:** Kaiser, Sven-Erik  
**Sent:** Wednesday, April 13, 2016 2:49 PM  
**To:** Berol, David <Berol.David@epa.gov>; Brown, Tristan <Brown.Tristan@epa.gov>; Cleland-Hamnett, Wendy <Cleland-Hamnett.Wendy@epa.gov>; Distefano, Nichole <DiStefano.Nichole@epa.gov>; Flattery, Priscilla <Flattery.Priscilla@epa.gov>; Grant, Brian <Grant.Brian@epa.gov>; Jones, Jim <Jones.Jim@epa.gov>; Mclean, Kevin <Mclean.Kevin@epa.gov>; Schmit, Ryan <schmit.ryan@epa.gov>  
**Subject:** FW: Sen. Udall TSCA TA request on Industry nominated chemicals

TSCA Team – Jonathan asks about his TA request to comment on EDF language. I said we expect to have it today. I think the plan is to finish Chem ID, PBT and 5 first. Please let me know if any problem comes up.  
Thanks,  
Sven

Sven-Erik Kaiser  
U.S. EPA  
Office of Congressional and Intergovernmental Relations  
1200 Pennsylvania Ave., NW (1305A)  
Washington, DC 20460  
202-566-2753

---

**From:** Black, Jonathan (Tom Udall) [mailto:Jonathan\_Black@tomudall.senate.gov]  
**Sent:** Wednesday, April 13, 2016 1:57 PM  
**To:** Kaiser, Sven-Erik <Kaiser.Sven-Erik@epa.gov>  
**Subject:** RE: Sen. Udall TSCA TA request on Industry nominated chemicals

No. I want them to do a good job. Hopefully COB today? let me know if not possible.

---

**From:** Kaiser, Sven-Erik [mailto:Kaiser.Sven-Erik@epa.gov]  
**Sent:** Wednesday, April 13, 2016 1:56 PM  
**To:** Black, Jonathan (Tom Udall) <Jonathan\_Black@tomudall.senate.gov>  
**Subject:** RE: Sen. Udall TSCA TA request on Industry nominated chemicals

Jonathan, we're working on it – is there a drop dead time I should tell folks. Thanks,  
Sven

Sven-Erik Kaiser

U.S. EPA  
Office of Congressional and Intergovernmental Relations  
1200 Pennsylvania Ave., NW (1305A)  
Washington, DC 20460  
202-566-2753

---

**From:** Black, Jonathan (Tom Udall) [[mailto:Jonathan\\_Black@tomudall.senate.gov](mailto:Jonathan_Black@tomudall.senate.gov)]  
**Sent:** Wednesday, April 13, 2016 1:52 PM  
**To:** Kaiser, Sven-Erik <[Kaiser.Sven-Erik@epa.gov](mailto:Kaiser.Sven-Erik@epa.gov)>  
**Subject:** RE: Sen. Udall TSCA TA request on Industry nominated chemicals

Checking in...

---

**From:** Black, Jonathan (Tom Udall) [[mailto:Jonathan\\_Black@tomudall.senate.gov](mailto:Jonathan_Black@tomudall.senate.gov)]  
**Sent:** Tuesday, April 12, 2016 6:19 PM  
**To:** Kaiser, Sven-Erik <[Kaiser.Sven-Erik@epa.gov](mailto:Kaiser.Sven-Erik@epa.gov)>  
**Subject:** FW: Sen. Udall TSCA TA request on Industry nominated chemicals

Would appreciate thoughts on these edits/suggestions from EDF

Attached see our additions to EPA's rewrite of section 6(b)(4)(E), which:

- Include consistently missed deadlines for risk evaluations and rules as an additional critical indicator of EPA being overrun by industry requests;
- Preclude EPA from allocating disproportionately more resources to industry-requested chemicals, a concept that is already in the current text; and
- Require EPA, when selecting among industry requests, to give preference to those presenting greater concern using the criteria specified in the prioritization section.

---

**From:** Black, Jonathan (Tom Udall) [[mailto:Jonathan\\_Black@tomudall.senate.gov](mailto:Jonathan_Black@tomudall.senate.gov)]  
**Sent:** Tuesday, April 12, 2016 2:02 PM  
**To:** Richard Denison; Joanna ([joannaslaney@gmail.com](mailto:joannaslaney@gmail.com))  
**Subject:** FW: Sen. Udall TSCA TA request on Industry nominated chemicals

---

**From:** Kaiser, Sven-Erik [<mailto:Kaiser.Sven-Erik@epa.gov>]  
**Sent:** Monday, April 11, 2016 5:20 PM  
**To:** Black, Jonathan (Tom Udall) <[Jonathan\\_Black@tomudall.senate.gov](mailto:Jonathan_Black@tomudall.senate.gov)>  
**Subject:** Sen. Udall TSCA TA request on Industry nominated chemicals

Jonathan,  
This TA responds to the request on industry nominated chemicals language.

You requested a replacement for (b)(4)(E) that would eliminate the industry cap, but nonetheless provide comparable assurance that industry prioritizations would not overrun the resources necessary for EPA priorities.

We believe the following replacement for (E)(i) and (ii) would accomplish this objective. It operates by simply shutting down the pipeline for taking further industry requests if EPA falls behind on the expected pace of pursuing its own priorities. The edits are also attached as a redline to section 6 (attached).

(E) LIMITATION AND CRITERIA

“(i) If the Administrator’s designation of priority substances or conduct of risk evaluations is insufficient to satisfy the requirements of paragraph (2)(A), (2)(B), or (2)(C), then the Administrator shall accept no further requests under subparagraph (C)(ii) until the requirements of paragraph (2)(A), (2)(B), and (2)(C) are all satisfied.

(ii) Requests for risk evaluations under subparagraph (C)(ii) shall be subject to public notice and comment and to the payment of fees pursuant to section 26(b)(3)(D), and the Administrator shall not expedite or otherwise provide special treatment to such risk evaluations,

This TA only responds to changes since the last version at the time we were reviewing. All previously offered TA is still germane to the extent the provision has not changed since the TA was offered. The technical assistance does not necessarily represent the policy positions of the agency and the administration on the bill, the draft language and the comments.

Please let me know if any additional questions. Thanks,  
Sven

Sven-Erik Kaiser  
U.S. EPA  
Office of Congressional and Intergovernmental Relations  
1200 Pennsylvania Ave., NW (1305A)  
Washington, DC 20460  
202-566-2753

---

**From:** Black, Jonathan (Tom Udall) [mailto:[Jonathan\\_Black@tomudall.senate.gov](mailto:Jonathan_Black@tomudall.senate.gov)]  
**Sent:** Monday, April 11, 2016 1:44 PM  
**To:** Kaiser, Sven-Erik <[Kaiser.Sven-Erik@epa.gov](mailto:Kaiser.Sven-Erik@epa.gov)>  
**Subject:** Re: Sen. Udall TSCA TA request on Industry nominated chemicals

Thanks Sven, I should have asked for you to draft to the Senate offer.

Possible to see that? Sorry.

Sent from my BlackBerry 10 smartphone on the Verizon Wireless 4G LTE network.

---

**From:** Kaiser, Sven-Erik  
**Sent:** Monday, April 11, 2016 1:33 PM  
**To:** Black, Jonathan (Tom Udall)  
**Subject:** Sen. Udall TSCA TA request on Industry nominated chemicals

Jonathan,  
This TA responds to the request on industry nominated chemicals.

**QUESTION:** EPA has indicated that the House bill allows industry nominated chemicals to overwhelm EPA's priorities.

**Is there a way to draft the house bill/proposal to allow for industry nominated chemicals to move through "without a cap" (as per the senate bill), but also without compromising EPA's priorities?**

Response:

The language in question is for the House offer. It would also work with minor adjustment for the House bill as passed. There is no min/max provision in the House bill as passed, so that part has to be deleted if you are modifying the House bill as passed.

House offer

6(b)(7) MINIMUM NUMBER.--

(A) IN GENERAL.-- Subject to the availability of appropriations, the Administrator shall initiate 10 or more risk evaluations under paragraph (3)(A)(i) or (3)(B) in each fiscal year beginning in the fiscal year of the date of enactment of the Frank R. Lautenberg Chemical Safety for the 21st Century Act.

(B) LIMITATION.-- Notwithstanding any other provision of this section, if the Administrator does not initiate 10 or more risk evaluations under (A) in any complete fiscal year following the date of enactment of the Frank R. Lautenberg Chemical Safety for the 21st Century Act, then in the following fiscal year the Administrator shall not accept any requests under paragraph (3)(A)(ii) and is not subject to paragraph (3)(C)(i)(I), unless in that fiscal year the Administrator has first initiated 10 risk evaluations under (A).

House bill as passed

6(b)(7) MINIMUM NUMBER.--

(A) IN GENERAL.-- Subject to the availability of appropriations, the Administrator shall initiate 10 or more risk evaluations under paragraph (3)(A)(i) or (3)(B) in each fiscal year beginning in the fiscal year of the date of enactment of the Frank R. Lautenberg Chemical Safety for the 21st Century Act.

(B) LIMITATION.-- Notwithstanding any other provision of this section, if the Administrator does not initiate 10 or more risk evaluations under (A) in any complete fiscal year following the date of enactment of the Frank R. Lautenberg Chemical Safety for the 21st Century Act, then in the following fiscal year the Administrator shall not accept any requests under paragraph (3)(A)(ii) unless in that fiscal year the Administrator has first initiated 10 risk evaluations under (A).

This TA only responds to changes since the last version at the time we were reviewing. All previously offered TA is still germane to the extent the provision has not changed since the TA was offered. The technical assistance does not necessarily represent the policy positions of the agency and the administration on the bill, the draft language and the comments.

Please let me know if any additional questions. Thanks,  
Sven

Sven-Erik Kaiser  
U.S. EPA  
Office of Congressional and Intergovernmental Relations  
1200 Pennsylvania Ave., NW (1305A)  
Washington, DC 20460  
202-566-2753

**From:** "Black, Jonathan (Tom Udall)"  
<[Jonathan\\_Black@tomudall.senate.gov](mailto:Jonathan_Black@tomudall.senate.gov)>  
**Date:** April 10, 2016 at 6:07:41 PM EDT

**To:** "Kaiser, Sven-Erik" <[Kaiser.Sven-Erik@epa.gov](mailto:Kaiser.Sven-Erik@epa.gov)>

**Subject:** Industry nominated chemicals

Hi Sven,

EPA has indicated that the House bill allows industry nominated chemicals to overwhelm EPA's priorities.

Is there a way to draft the house bill/proposal to allow for industry nominated chemicals to move through "without a cap" (as per the senate bill), but also without compromising EPA's priorities?

Message

---

**From:** Grant, Brian [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=EC6104B72CAB42BA9B1E1DA67D4288AE-GRANT, BRIAN]  
**Sent:** 2/10/2016 11:05:32 PM  
**To:** Kaiser, Sven-Erik [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=ac78d3704ba94edbbd0da970921271ff-SKAISER]; Jones, Jim [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c32c4b9347004778b0a93a4cbd83fc8a-JJONES1]; Cleland-Hamnett, Wendy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b84439fcd02426abd539d8bb6c9ef6f-Cleland-Hamnett, Wendy]; Flattery, Priscilla [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bf3936418d3944f6a520c8fdb5cfdef-Flattery, Priscilla]; Ryan Schmit [Ryan.Schmit@mail.house.gov]; Mclean, Kevin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=869a9152d655420594d8f94a966b8892-KMCLEAN]; Distefano, Nichole [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=31d32a3a3a9e4591b5fd3eb96e8b78-Distefano,]  
**Subject:** RE: Sen. Markey TSCA TA Request on replacement parts  
**Attachments:** Markey TSCA TA replacement parts BG.docx

Here is our proposed reply on the OGC portion of the replacement part requests; per my earlier email, Wendy, I've indicated whether I think OPPT input is needed.

\*\*\*\*\*

Attached are our technical comments on the bill text you sent us.

With respect to your additional questions:

TSCA excludes from the "chemical substance" definition any food or food additive as defined under the Federal Food, Drug, and Cosmetic Act (TSCA section 3(2)(B)(vi)). Because the FFDCA is implemented by FDA, EPA generally defers to FDA on the scope of this exclusion. Thus, without consulting with FDA, we cannot give a definitive answer as to whether certain items are or are not covered by TSCA.

That said, we believe that the specific items you identify (baby bottle nipples, sippy cups and straws) would most likely be considered foods within the meaning of the FFDCA and therefore outside the scope of TSCA regulation, if the regulatory concern is with migration of substances from those items into food. In addition, although we do not have particular expertise on the FDA/CPSC MOU, it appears to us that regulation to prevent or address migration of phthalates into milk or formula from baby bottle nipples would be covered by the MOU. In any event, coverage under MOU should not be relevant to whether substances in these items are chemical substances under TSCA; that determination would turn on the scope of the FFDCA definition of "food", regardless of how FDA and CPSC have chosen to coordinate their authorities for other items or substances.

[OPPT: ADD HERE RESPONSE TO HER FINAL QUESTION: if there are other examples I should be thinking about in addition to the couch seat cover, esp if there is a child-specific one, do let me know.]

*Brian Grant*  
EPA Office of General Counsel  
202-564-5503

---

**From:** Kaiser, Sven-Erik  
**Sent:** Monday, February 08, 2016 7:03 PM  
**To:** Jones, Jim <Jones.Jim@epa.gov>; Cleland-Hamnett, Wendy <Cleland-Hamnett.Wendy@epa.gov>; Flattery, Priscilla

<Flattery.Priscilla@epa.gov>; Ryan Schmit <Ryan.Schmit@mail.house.gov>; Mclean, Kevin <Mclean.Kevin@epa.gov>; Grant, Brian <Grant.Brian@epa.gov>; Berol, David <Berol.David@epa.gov>; Distefano, Nichole <DiStefano.Nichole@epa.gov>

**Subject:** Fwd: Sen. Markey TSCA TA Request on replacement parts

Additional info on the Markey replacement request

Begin forwarded message:

**From:** "Freedhoff, Michal (Markey)" <Michal\_Freedhoff@markey.senate.gov>

**Date:** February 8, 2016 at 6:53:40 PM EST

**To:** "Kaiser, Sven-Erik" <Kaiser.Sven-Erik@epa.gov>

**Subject:** Re: Sen. Markey TSCA TA Request on replacement parts

Additional question on this topic.

I know there is an MOU btw FDA and CPSC that describes the regulatory process for BPA in baby bottles. Does the same MOU cover the pthalates in the baby bottle nipples? If not, would that fall under "replacement parts" authority?

Would sippy cup lids or straws for straw cups fall under that authority, or is all of this FDA?

You can see where I'm going with this - if there are other examples I should be thinking about in addition to the couch seat cover, esp if there is a child-specific one, do let me know.

Thanks

Michal Ilana Freedhoff, Ph.D.  
Director of Oversight and Investigations  
Office of Senator Edward J. Markey (D-MA)

---

**From:** Freedhoff, Michal (Markey) [mailto:Michal\_Freedhoff@markey.senate.gov]

**Sent:** Monday, February 08, 2016 5:15 PM

**To:** Kaiser, Sven-Erik <Kaiser.Sven-Erik@epa.gov>

**Subject:** RE: Sen. Markey TSCA TA Request on replacement parts

Thanks Sven

In response to the comments – there is no broader document that exists, let alone that can be sent, but assume that we are talking about a section 6 provision.

The House language exempts ALL replacement parts designed prior to the effective date – and thus captures all replacement parts MANUFACTURED before the effective date as well.

I am trying to find a way to soften the House language, so that it captures the car brake pad or airplane engine part, but NOT the replacement couch seat cushion cover or replacement pacifier nipple. You guys sent me an earlier draft that would allow EPA to exempt replacement parts designed before the effective date following an affirmative finding that is similar to the language I sent. HOWEVER:

- 1) The House did not like that one bit. ☺



- 2) Even if the House did like that or my version, one would STILL presumably want to ensure that replacement parts that were manufactured prior to the effective date are exempted, even if such a finding (affirmative or not) were made.
- 3) That is why any final provision that doesn't exempt ALL replacement parts designed prior to the effective date would need the Senate text as well.

So what I am trying to propose is

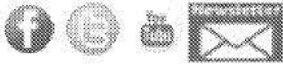
- Manufactured by stays exempted
- Can we find a "designed by" provision that includes a presumption that the part would be exempted, UNLESS EPA makes a finding? If what I sent you doesn't do it, please suggest an alternative, and if you don't think your comment A3 works for that purpose, pls let me know.

Thanks

Michal

Michal Ilana Freedhoff, Ph.D.  
Director of Oversight & Investigations  
Office of Senator Edward J. Markey  
255 Dirksen Senate Office Building  
Washington, DC 20510  
202-224-2742

Connect with Senator Markey



---

**From:** Kaiser, Sven-Erik [<mailto:Kaiser.Sven-Erik@epa.gov>]  
**Sent:** Monday, February 08, 2016 5:07 PM  
**To:** Freedhoff, Michal (Markey)  
**Subject:** Sen. Markey TSCA TA Request on replacement parts

Michal,  
Attached please find technical assistance that responds to your request on replacement parts. Please let me know if any questions. Thanks,  
Sven

Sven-Erik Kaiser  
U.S. EPA  
Office of Congressional and Intergovernmental Relations  
1200 Pennsylvania Ave., NW (1305A)  
Washington, DC 20460  
202-566-2753

---

**From:** Freedhoff, Michal (Markey) [[mailto:Michal\\_Freedhoff@markey.senate.gov](mailto:Michal_Freedhoff@markey.senate.gov)]  
**Sent:** Tuesday, February 02, 2016 10:29 AM  
**To:** Kaiser, Sven-Erik <[Kaiser.Sven-Erik@epa.gov](mailto:Kaiser.Sven-Erik@epa.gov)>  
**Subject:** TA request - replacement parts

Hi Sven

Your past TA provided an option to allow EPA to exempt replacement parts designed prior to the effective date of a TSCA regulation from that regulation if EPA found that the replacement parts would not be impracticable to replace/redesign. After receiving feedback from colleagues, I have re-drafted it to make the presumption be exemption,

rather than the presumption being non-exemption. Can you take a look, suggest any changes and describe any concerns you might have with implementation?

Thanks  
Michal

*This language is provided by EPA as technical assistance in response to a congressional request. The technical assistance is intended for use only by the requester. The technical assistance does not necessarily represent the policy positions of the agency and the administration on the bill, the draft language and comments.*

(iii) shall exempt replacement parts that are manufactured prior to the effective date of the rule for articles that are first manufactured prior to the effective date of the rule unless the Administrator finds the replacement parts contribute significantly to the identified risk, including identified risk to identified potentially exposed subpopulations;

(iv) shall exempt replacement parts that are designed prior to the effective date of the rule, unless the Administrator finds

- (1) that it is practicable to manufacture such ~~the~~ replacement parts that comply with the requirements of the rule and that can be used in ~~are not impracticable to redesign or replace without redesigning the articles of which they are components without redesign of the articles, or~~
- (2) such replacement parts contribute significantly to the identified risk, including identified risk to identified potentially exposed subpopulations;

**Commented [A1]:** Note that this limitation is not in (iv). Your cover email indicates an intent to exempt all replacement parts that are manufactured prior to the rule, but (iii) exempts them only if the article was first manufactured prior to the rule. If you are looking for parallelism between (iii) and (iv), you should probably either drop this language in (iii) or add it to (iv). If it is retained, we note that the "first" in this language is confusing. An article is presumably manufactured only once. Presumably, "first" refers to the *type* of article, so that a replacement part for an article manufactured after the rule date would be exempt if it was one of a series of identical or similar articles first manufactured prior to the rule date, but the meaning is not 100% clear.

**Commented [A2]:** Added for the sake of parallelism with (iii).

**Commented [A3]:** It would likely be difficult for EPA to determine when a replacement part was designed, and the design could pre-date the rule by years, making it challenging for EPA to implement the exemption.

**Commented [A4]:** No comma in (iii)

**Commented [A5]:** The original wording was probably ok, but this seems more tied to the statutory concepts and avoids a limitation to redesign or replacement.

Message

---

**From:** Kaiser, Sven-Erik [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=AC78D3704BA94EDBBD0DA970921271FF-SKAISER]  
**Sent:** 2/9/2016 12:02:32 AM  
**To:** Jones, Jim [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c32c4b9347004778b0a93a4cbd83fc8a-JJONES1]; Cleland-Hamnett, Wendy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b84439fcd02426abd539d8bb6c9ef6f-Cleland-Hamnett, Wendy]; Flattery, Priscilla [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bf3936418d3944f6a520c8fdb5cfdef-Flattery, Priscilla]; Ryan Schmit [Ryan.Schmit@mail.house.gov]; Mclean, Kevin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=869a9152d655420594d8f94a966b8892-KMCLEAN]; Grant, Brian [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=ec6104b72cab42ba9b1e1da67d4288ae-Grant, Brian]; Berol, David [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=a227f36ca9ee4eeb98a95cb22058de43-DBerol]; Distefano, Nichole [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=31d32a3a3a9e4591b5fd3eb96e8b78-Distefano,]  
**Subject:** Fwd: Sen. Markey TSCA TA Request on replacement parts

Additional info on the Markey replacement request

Begin forwarded message:

**From:** "Freedhoff, Michal (Markey)" <Michal\_Freedhoff@markey.senate.gov>  
**Date:** February 8, 2016 at 6:53:40 PM EST  
**To:** "Kaiser, Sven-Erik" <Kaiser.Sven-Erik@epa.gov>  
**Subject:** Re: Sen. Markey TSCA TA Request on replacement parts

Additional question on this topic.

I know there is an MOU btw FDA and CPSC that describes the regulatory process for BPA in baby bottles. Does the same MOU cover the phthalates in the baby bottle nipples? If not, would that fall under "replacement parts" authority?

Would sippy cup lids or straws for straw cups fall under that authority, or is all of this FDA?

You can see where I'm going with this - if there are other examples I should be thinking about in addition to the couch seat cover, esp if there is a child-specific one, do let me know.

Thanks

Michal Ilana Freedhoff, Ph.D.  
Director of Oversight and Investigations  
Office of Senator Edward J. Markey (D-MA)

---

**From:** Freedhoff, Michal (Markey) [mailto:Michal\_Freedhoff@markey.senate.gov]  
**Sent:** Monday, February 08, 2016 5:15 PM  
**To:** Kaiser, Sven-Erik <Kaiser.Sven-Erik@epa.gov>  
**Subject:** RE: Sen. Markey TSCA TA Request on replacement parts

Thanks Sven

In response to the comments – there is no broader document that exists, let alone that can be sent, but assume that we are talking about a section 6 provision.

The House language exempts ALL replacement parts designed prior to the effective date – and thus captures all replacement parts MANUFACTURED before the effective date as well.

I am trying to find a way to soften the House language, so that it captures the car brake pad or airplane engine part, but NOT the replacement couch seat cushion cover or replacement pacifier nipple. You guys sent me an earlier draft that would allow EPA to exempt replacement parts designed before the effective date following an affirmative finding that is similar to the language I sent. HOWEVER:

- 1) The House did not like that one bit. ☺
- 2) Even if the House did like that or my version, one would STILL presumably want to ensure that replacement parts that were manufactured prior to the effective date are exempted, even if such a finding (affirmative or not) were made.
- 3) That is why any final provision that doesn't exempt ALL replacement parts designed prior to the effective date would need the Senate text as well.

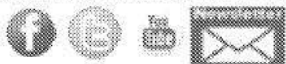
So what I am trying to propose is

- Manufactured by stays exempted
- Can we find a "designed by" provision that includes a presumption that the part would be exempted, UNLESS EPA makes a finding? If what I sent you doesn't do it, please suggest an alternative, and if you don't think your comment A3 works for that purpose, pls let me know.

Thanks  
Michal

Michal Ilana Freedhoff, Ph.D.  
Director of Oversight & Investigations  
Office of Senator Edward J. Markey  
255 Dirksen Senate Office Building  
Washington, DC 20510  
202-224-2742

Connect with Senator Markey



---

**From:** Kaiser, Sven-Erik [<mailto:Kaiser.Sven-Erik@epa.gov>]  
**Sent:** Monday, February 08, 2016 5:07 PM  
**To:** Freedhoff, Michal (Markey)  
**Subject:** Sen. Markey TSCA TA Request on replacement parts

Michal,  
Attached please find technical assistance that responds to your request on replacement parts. Please let me know if any questions. Thanks,  
Sven

Sven-Erik Kaiser  
U.S. EPA  
Office of Congressional and Intergovernmental Relations

1200 Pennsylvania Ave., NW (1305A)  
Washington, DC 20460  
202-566-2753

---

**From:** Freedhoff, Michal (Markey) [[mailto:Michal\\_Freedhoff@markey.senate.gov](mailto:Michal_Freedhoff@markey.senate.gov)]

**Sent:** Tuesday, February 02, 2016 10:29 AM

**To:** Kaiser, Sven-Erik <[Kaiser.Sven-Erik@epa.gov](mailto:Kaiser.Sven-Erik@epa.gov)>

**Subject:** TA request - replacement parts

Hi Sven

Your past TA provided an option to allow EPA to exempt replacement parts designed prior to the effective date of a TSCA regulation from that regulation if EPA found that the replacement parts would not be impracticable to replace/redesign. After receiving feedback from colleagues, I have re-drafted it to make the presumption be exemption, rather than the presumption being non-exemption. Can you take a look, suggest any changes and describe any concerns you might have with implementation?

Thanks  
Michal

Message

---

**From:** Walsh, Ed [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=51F3BAC3AF644626B6A70F087751BACA-EWALSH]  
**Sent:** 5/21/2015 8:50:56 PM  
**To:** Melissa Zimmerman [Melissa\_Zimmerman@appro.senate.gov]  
**CC:** Kaiser, Sven-Erik [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=ac78d3704ba94edbbd0da970921271ff-SKAISER]; Cleland-Hamnett, Wendy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b84439fcd02426abd539d8bb6c9ef6f-Cleland-Hamnett, Wendy]; Terris, Carol [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=87abf69049c94368881e93dc19187011-cterris]  
**Subject:** Fwd: TSCA legislation - approach to FY 2016 funding

Melissa.

Here is a short description of what we discussed as a potential approach on the TSCA legislation funding issue. Please feel free to use this to start the discussion tomorrow morning.

Potential approach:

<!--[if !supportLists]-->1) <!--[endif]-->Appropriations negotiations proceed, to the final levels for EPA  
<!--[if !supportLists]-->2) <!--[endif]-->Then appropriators add on an amount that would be provided for legislation implementation. To be determined: the amount of the 'increment' – possibly either based on Technical Assistance from EPA or a delta from FY 2015

The intent was to address three concerns: 1) that there would not be adequate funding to launch implementation of the legislative requirements, including the fee and the 'floor' level in the draft legislation; 2) simply requiring EPA hold the TSCA components in the budget at a certain amount would create undue pressure on other parts of the budget; and 3) using the 'notwithstanding' language that has been applied in the past would be inconsistent with what would be a very new and bi-partisan success in passing the legislation.

When discussed with EPA folks close to the active work on the legislation, they felt this approach would be welcomed by the stakeholders involved.

Message

---

**From:** Blizzard, James [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=B4C40B04E4714D36A2C11BEEFC3A9D13-JBLIZZ]  
**Sent:** 5/13/2015 3:58:12 PM  
**To:** Zimmerman, Melissa (Appropriations) [Melissa\_Zimmerman@appro.senate.gov]; Vaught, Laura [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c30920bcb6214a91b7e3c1e7810c63e1-Vaught, Laura]; Jones, Jim [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c32c4b9347004778b0a93a4cbd83fc8a-JJONES1]; Terris, Carol [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=87abf69049c94368881e93dc19187011-cterris]  
**CC:** Walsh, Ed [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=51f3bac3af644626b6a70f087751baca-EWalsh]; Kaiser, Sven-Erik [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=ac78d3704ba94edbbd0da970921271ff-SKAISER]; Black, Jonathan (Tom Udall) [Jonathan\_Black@tomudall.senate.gov]; Cleland-Hamnett, Wendy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b84439cdf02426abd539d8bb6c9ef6f-Cleland-Hamnett, Wendy]  
**Subject:** RE: TSCA Fees

4:00 PM Today

Call in number is Ex. 6 - Personal Privacy Conference code Ex. 6 - Personal Privacy

---

**From:** Zimmerman, Melissa (Appropriations) [mailto:Melissa\_Zimmerman@appro.senate.gov]  
**Sent:** Wednesday, May 13, 2015 11:52 AM  
**To:** Blizzard, James; Vaught, Laura  
**Cc:** Walsh, Ed; Terris, Carol; Kaiser, Sven-Erik; Black, Jonathan (Tom Udall)  
**Subject:** RE: TSCA Fees

Yes, that works for me. I am including Jonathan Black with the Senator's personal office, who will also join us.

---

**From:** Blizzard, James [mailto:Blizzard.James@epa.gov]  
**Sent:** Wednesday, May 13, 2015 11:36 AM  
**To:** Zimmerman, Melissa (Appropriations); Vaught, Laura  
**Cc:** Walsh, Ed; Terris, Carol; Kaiser, Sven-Erik  
**Subject:** RE: TSCA Fees

Melissa, is 4 PM today good for a call?

---

**From:** Zimmerman, Melissa (Appropriations) [mailto:Melissa\_Zimmerman@appro.senate.gov]  
**Sent:** Wednesday, May 13, 2015 8:43 AM  
**To:** Vaught, Laura  
**Cc:** Walsh, Ed; Blizzard, James; Terris, Carol  
**Subject:** TSCA Fees

Hi Laura,



We are trying to puzzle out how to make sure an FY16 appropriation would be sure to trigger TSCA fee collection in the event that the Udall/Vitter bill is enacted. As you know, the FY16 request appears to be too low.

Rachael asked me to connect with you and Jim Jones on this issue. I think Carol Terris should also join. Could we plan a call for today or tomorrow?

Thanks,  
Melissa

Sent from my BlackBerry 10 smartphone on the Verizon Wireless 4G LTE network.

Message

---

**From:** Jones, Jim [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=C32C4B9347004778B0A93A4CBD83FC8A-JJONES1]  
**Sent:** 3/6/2015 10:29:24 PM  
**To:** Black, Jonathan (Tom Udall) [Jonathan\_Black@tomudall.senate.gov]  
**CC:** Cleland-Hamnett, Wendy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b84439fcd02426abd539d8bb6c9ef6f-Cleland-Hamnett, Wendy]  
**Subject:** Re: how many chemicals has TSCA banned/regulated?

The problems with existing sec 6 are the fundamental reason behind efforts to reform TSCA. There has been very little regulation under TSCA.

Wendy, can you provide the 5 examples?

Sent from my iPhone

On Mar 6, 2015, at 5:24 PM, Black, Jonathan (Tom Udall) <[Jonathan\\_Black@tomudall.senate.gov](mailto:Jonathan_Black@tomudall.senate.gov)> wrote:

Do you know what those chemicals were?

Also, does that mean you haven't regulated stuff?

---

**From:** Cleland-Hamnett, Wendy [<mailto:Cleland-Hamnett.Wendy@epa.gov>]  
**Sent:** Friday, March 06, 2015 5:20 PM  
**To:** Jones, Jim; Black, Jonathan (Tom Udall)  
**Subject:** Re: how many chemicals has TSCA banned/regulated?

Asbestos would have been number 6. So 5 successful attempts prior to asbestos.

---

**From:** Jones, Jim  
**Sent:** Friday, March 6, 2015 5:13 PM  
**To:** Black, Jonathan (Tom Udall)  
**Cc:** Cleland-Hamnett, Wendy  
**Subject:** Re: how many chemicals has TSCA banned/regulated?

I believe we have used sec 6 to ban or restrict a chemical 5 times. I am copying Wendy for confirmation. Wendy, when we use that stat does it include asbestos which actually failed?

Sent from my iPhone

On Mar 6, 2015, at 5:02 PM, Black, Jonathan (Tom Udall) <[Jonathan\\_Black@tomudall.senate.gov](mailto:Jonathan_Black@tomudall.senate.gov)> wrote:

In its history.  
I have the number 5

Message

---

**From:** Black, Jonathan (Tom Udall) [Jonathan\_Black@tomudall.senate.gov]  
**Sent:** 3/6/2015 10:23:59 PM  
**To:** Cleland-Hamnett, Wendy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b84439fcd02426abd539d8bb6c9ef6f-Cleland-Hamnett, Wendy]; Jones, Jim [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c32c4b9347004778b0a93a4cbd83fc8a-JJONES1]  
**Subject:** RE: how many chemicals has TSCA banned/regulated?

Do you know what those chemicals were?

Also, does that mean you haven't regulated stuff?

---

**From:** Cleland-Hamnett, Wendy [mailto:Cleland-Hamnett.Wendy@epa.gov]  
**Sent:** Friday, March 06, 2015 5:20 PM  
**To:** Jones, Jim; Black, Jonathan (Tom Udall)  
**Subject:** Re: how many chemicals has TSCA banned/regulated?

Asbestos would have been number 6. So 5 successful attempts prior to asbestos.

---

**From:** Jones, Jim  
**Sent:** Friday, March 6, 2015 5:13 PM  
**To:** Black, Jonathan (Tom Udall)  
**Cc:** Cleland-Hamnett, Wendy  
**Subject:** Re: how many chemicals has TSCA banned/regulated?

I believe we have used sec 6 to ban or restrict a chemical 5 times. I am copying Wendy for confirmation. Wendy, when we use that stat does it include asbestos which actually failed?

Sent from my iPhone

On Mar 6, 2015, at 5:02 PM, Black, Jonathan (Tom Udall) <Jonathan\_Black@tomudall.senate.gov> wrote:

In its history.  
I have the number 5